

STAFF REPORT

of the

**Domestic Policy Subcommittee Majority Staff
Oversight and Government Reform Committee
House of Representatives**

Dennis J. Kucinich, Chairman

**“Die or Give Up Trying”: How Poor Contractor Performance,
Government Mismanagement and the Erosion of Quality Controls
Denied Thousands of Disabled Veterans Timely and Accurate
Retroactive Retired Pay Awards**

**Embargoed until Noon
July 15, 2008**

EXECUTIVE SUMMARY

to

“Die or Give Up Trying”: How Poor Contractor Performance, Government Mismanagement and the Erosion of Quality Controls Denied Thousands of Disabled Veterans Timely and Accurate Retroactive Retired Pay Awards.

Retroactive pay awards to eligible retired veterans with disabilities were enacted by Congress in 2003 and 2004. But delays in delivering the new benefit were significant. The Defense Finance and Accounting Service (DFAS) determined that more than 133,000 potentially eligible veterans were waiting for adjudication of their claims three years after Congress enacted the laws. The backlog grew to over 217,000 veterans as the delays compounded.

DFAS awarded a no-bid, Cost Plus Fixed Fee contract to Lockheed Martin (“Lockheed”) for the VA Retro program, as the work to compute the retroactive pay awards was known. Lockheed originally had a deadline of November 2007 to work through the backlog of VA Retro cases. But Lockheed missed that deadline and every succeeding one. By March 1, 2008, over 60,000 eligible veterans still had not had their cases reviewed for payment.

For its part, Lockheed was unable to automate calculation of VA Retro claims, as both Lockheed and the Government had intended. The reasons were several: the individual circumstances of the disabled veterans were complicated and difficult to translate into reliable computer programming rules, and the databases necessary to automate did not exist at the project’s inception. The government bore responsibility, too. The Department of Veterans Affairs and the military services were slow to put the data in the necessary form for automation.

Lockheed moved to hire more staff to perform the calculations manually. Yet productivity remained low and top DFAS managers were concerned about the high number of errors their quality control auditors were detecting.

But the Government was powerless to hold the contractor accountable; the contract did not provide for penalties for poor contractor performance.

In an effort to rescue the program from further delay, DFAS suspended its own quality control procedures, effectively allowing Lockheed to verify the accuracy of its own calculations. This, in combination with assigning federal workers to augment Lockheed’s workforce, finally had the desired effect: By the end of June 2008, DFAS and Lockheed announced the VA Retro backlog had been eliminated, and Lockheed had received \$18.74 million for the VA Retro program.

To determine the causes of the delays in the VA Retro program, an investigation was launched by the Domestic Policy Subcommittee in May 2008. The Subcommittee Majority Staff reviewed a total of 16,000 pages of documents produced separately by

DFAS and Lockheed. Staff also interviewed disabled veterans whose VA Retro payments had been delayed or denied.

One of those veterans, whose eligibility was initially denied, struggled for one year to get DFAS to reevaluate his denial. Eventually, he prevailed, after producing documentation that would have also been available to Lockheed. He was finally awarded a \$15,000 retroactive payment. He told the Subcommittee, “Most guys who get a letter saying they get zero money would never challenge it. They wouldn’t know how. I’d be surprised if they understand what they get in the mail. And lots of guys will just trust their government I get sad to the point of crying seeing the guys in worse shape than me. [But] DFAS wants us to die or just give up trying [to get our benefits].”

KEY FINDINGS

DELAYS IN THE IMPLEMENTATION AND EXECUTION OF THE VA RETRO PROGRAM WERE SIGNIFICANT. GOVERNMENT MISMANAGEMENT AND POOR PERFORMANCE BY LOCKHEED RESULTED IN A DELAY OF FIVE AND ONE-HALF YEARS TO REVIEW THE CLAIMS OF ELIGIBLE DISABLED VETERANS AFTER CONGRESS CREATED NEW BENEFITS FOR RETIRED VETERANS WITH COMBAT-RELATED AND SERVICE-RELATED DISABILITIES.

UP TO 8,763 DISABLED VETERANS DIED BEFORE THEIR CASES WERE REVIEWED FOR VA RETRO ELIGIBILITY.

DFAS FOUND LOCKHEED’S PERFORMANCE DEFICIENT BUT WAS UNABLE TO ASSESS PENALTIES BY THE CONTRACT’S TERMS.

DFAS CUT BACK QUALITY CONTROL AND USED FEDERAL WORKERS TO SUPPLEMENT LOCKHEED’S WORKFORCE TO DECREASE PAYMENT BACKLOG.

DFAS BYPASSED GAO REGULATIONS ON STATISTICAL SAMPLING IN FEDERAL QUALITY-CONTROL PROCEDURES.

LOCKHEED APPLIED A WEAKER STANDARD TO QUALITY ASSURANCE THAN STANDARD MANDATED BY GAO.

UP TO 60,051 PAYMENTS TO VETERANS WERE ISSUED AFTER A SUSPENSION OF QUALITY CONTROL MEASURES WENT INTO EFFECT ON MARCH 1, 2008.

AT LEAST 28,283 VETERANS WERE DENIED RETROACTIVE PAY BASED ON DETERMINATIONS MADE WHOLLY WITHOUT QUALITY ASSURANCE REVIEW.

I. BACKGROUND

A. NEW BENEFITS FOR DISABLED VETERANS

Congress enacted new benefits in 2003 and 2004 for veterans disabled by service-related and combat-related injuries.¹ These benefits entitled eligible disabled veterans to receive concurrently both military retired and VA disability pay. Previously, military retired pay was reduced by the amount of VA disability pay a disabled veteran received.

The 2002 law authorized Combat Related Special Compensation (CRSC), which offers tax-free compensation to retired veterans who are entitled to retired pay and have at least a 10 percent VA disability rating from combat related injuries.² The 2004 law authorized Concurrent Retirement Disability Payment (CRDP). CRDP is a phased-in, taxable restoration of the retired pay deducted from military retirees' accounts due to their receipt of compensation from the Department of Veterans Affairs.³ Approximately 223,180 disabled veterans receive monthly payments CRDP and another 60,155 disabled veterans receive monthly payments under CRSC.

In addition, many disabled veterans also became eligible for a single retroactive payment pursuant to the new entitlements, due to changes in their disability status. Payments for this retroactive period became known within the Defense Finance and Accounting Service (DFAS) as "VA Retro." DFAS determined that there were 133,057 potentially eligible veterans as of September 2006. This backlog became known as the "original inventory." As processing delays continued, another contingent of disabled veterans—eventually comprised of 84,237 either newly retiring veterans or veterans whose disability status had changed—was increasing the backlog substantially.

B. DOD CONTRACTS WITH LOCKHEED TO CALCULATE BENEFIT PAYMENTS

¹ See Section 636, Bob Stump National Defense Authorization Act for Fiscal Year 2003, Pub. L. No. 107-314 (2002), codified as 10 U.S.C. § 1413a. See also Section 641, National Defense Authorization Act for Fiscal Year 2004, Pub. L. 108-136 (2004), amending 10 U.S.C. § 1414.

² Additional legislation, signed into law on January 28, 2008, expanded eligibility for CRSC to include veterans who retired under Chapter 61 (disabilities with less than twenty years of active duty service).

³ Under this law, disabled veterans are eligible if they have a DVA-rated service-connected disability of 50 percent or greater and have twenty or more qualifying years of service. Additional legislation signed into law on January 28, 2008, amended CRDP (amending 10 U.S.C. § 1414(a)(1)) to include disabled veterans who are receiving VA disability compensation at the rate payable for a 100 percent disability by reason of a determination of individual un-employability.

In July 2006, DFAS awarded a no-bid, Cost Plus Fixed Fee contract to Lockheed under which Lockheed was to compute the retroactive pay awards.

Lockheed received the contract because the work was determined to be within the scope of a preexisting contract the agency had for Retired and Annuitant (R&A) pay with a contractor, ACS Government Solutions Group, Inc, that Lockheed had acquired in 2003.

DFAS had originally privatized R&A in 2001, pursuant to a public-private competition under OMB Circular A-76. The contract was worth \$346 million over 10 years.

The privatization of R&A was controversial. DFAS privatized the work on the basis of only an estimated \$1.9 million difference over ten years with what the Government would have charged. The winning private contractor's bid proposed using a workforce half the size the Government retained to perform R&A work, with no decrease in performance.⁴

After the privatization, there were concerns voiced within DFAS management about potential degradation of the quality of work:

If we somehow now believe strongly that the contractor can't perform this work when and as required, we should retain some core capability... Someone has to balance the risk of contractor failure to perform against the costs of maintaining some core capability in retired and annuity pay and in DRAS support. Obviously, if we are unwilling to let the contractor fail, then we will for the next ten years always have the option of reducing requirements or bailing the contractor out with more money.⁵

At the request of Congressman Dennis J. Kucinich, the competition process was audited in 2003 by the Inspector General Department of Defense (DoDIG). DoDIG reported that an error was made in the preparation of the Government's bid, resulting in the erroneous inflation of the Government's bid by \$31.8 million.⁶ DFAS retained the contractor, in spite of the error's discovery.

⁴ The contractor's proposal for staffing assumed that staffing levels for R&A could be cut in half over the life of the ten year contract. The Government had 570 employees to perform R&A functions. At the contract's inception, the contractor would retain 451 employees, most of them hired away from the Government. The contractor would steadily cut the workforce, so that by year 10, there would be no more than 250 employees. Contractor proposal, (MDA220-00-R-6001) (Jan. 23, 2001).

⁵ E-mail from Stephen Giebelhaus to Lois Elkin, Mattie L. Anderson, Karen Bell, (Aug. 6, 2001).

⁶ Department of Defense Office of the Inspector General, *Public/Private Competition for the Defense Finance and Accounting Service Military Retired and Annuitant Pay Functions* (Mar. 21, 2003) (D- 2003-056).

C. DFAS RESPONDS TO CONGRESSIONAL OVERSIGHT AND ANNOUNCES CLEARANCE OF PAYMENT BACKLOG.

Delays in delivering the VA Retro benefit were significant. The backlog of potentially eligible veterans persisted for five and one-half years after Congressional enactment. As those delays in paying the VA Retro award compounded, so too did Congressional attention. Congressman Dennis J. Kucinich and Congressman Bob Filner, Chairman of the Committee on Veterans Affairs, made an unannounced site visit to the DFAS facility in Cleveland, OH in late February 2008. Senator Ron Wyden peppered Defense Comptroller Tina Jonas with questions on the subject at a hearing in February 2008. She promised to triple the number of people on the project.⁷

To determine the causes of the delays in the VA Retro program, an investigation was launched by the Domestic Policy Subcommittee in May 2008. The Subcommittee Majority Staff reviewed a total of 16,000 pages of documents produced separately by DFAS and Lockheed. Staff also interviewed disabled veterans whose VA Retro payments had been delayed or denied.

Five and one-half years after the laws creating the VA Retro award went into effect, DFAS announced the VA Retro backlog had been eliminated. Lockheed received \$18.74 million for the VA Retro project.⁸

II. FINDINGS

A. UP TO 8,763 DISABLED VETERANS DIED BEFORE THEIR CASES WERE REVIEWED FOR VA RETRO ELIGIBILITY.

The five and one-half year delay in processing veterans' claims to the VA Retro award was too long for many veterans. Of the original inventory of 133,057 veterans, 8,763 died, most of whom died before their cases were adjudicated.⁹

B. DOD ACTED SLOWLY TO RESPOND TO CONGRESSIONAL INTENT.

DoD acted slowly to respond to enactment of the laws. In fact, the first formal interagency meeting within the Government to create a program to make the payments

⁷ Senate Budget Committee, *Fiscal Year 2009 Defense Budget and War Costs*, 110th Cong. (Feb. 12, 2008).

⁸ Lockheed, *Overview of the Department of Veterans Affairs Retroactive Awards (DVA Retro) Project* (July 9, 2008). DFAS reported to the Subcommittee payments to Lockheed of \$13,549,054 as of April 24, 2008, and cost of using government personnel to augment Lockheed of \$464,136, as of May 24, 2008. DFAS, *VA Retro Update to Domestic Policy Subcommittee Staff* (June 24, 2008).

⁹ E-mail from Judy Berman to Vic Edgerton (Feb. 15, 2008).

was not held until February 2005, more than two and one-half years after Congress enacted the benefit.¹⁰

C. POOR CONTRACTOR PERFORMANCE AND INEFFECTIVE GOVERNMENT MANAGEMENT ADDED TO THE DELAY.

1. LOCKHEED ENCOUNTERED DIFFICULTIES, MISSED DEADLINES, DUE TO FAILURE TO RETAIN SUFFICIENT STAFF.

Work on the VA Retro program began in July 2006. After an initial development phase, the contract entered into a payment phase in the Fall 2006.

Calculating the VA retroactive benefit was complicated. VA Retro is designed to pay eligible military retirees any retroactive money due as a result of increases in their percentage of disability. The VA Retro designation applies to any retiree who is retroactively awarded an initial or increased VA disability rating and, as a result, either becomes initially entitled to CRDP or CRSC or becomes entitled to an increased amount of CRDP or CRSC.

Individual amounts vary based on differences in disability amount and length of retroactive period. The amount of retroactive payment also varies depending upon other factors, including whether or not some payment is deducted and paid to a former spouse, whether the veteran had alternated between receiving non-taxable CRSC and taxable CRDP, and whether there are garnishments. In addition, changes in VA Retro benefit levels are also effected by alterations in medical disability ratings. For example, it is not uncommon for a retired service member to receive changes to his VA disability rating in view of increasing complications resulting from service or combat-related injuries.

Lockheed originally had a deadline of November 2007 to work through the backlog of VA Retro cases.¹¹ But Lockheed missed that deadline and every succeeding one. Lockheed personnel had difficulty making the computations in sufficient volume to eliminate the backlog in a timely manner. Lockheed had performed calculations for only half of the backlog by March 2007, more than three years after Congress created the benefit. Further, those cases were, by design, the easiest cases to compute. Lockheed and the Government had agreed to hold off paying the more complicated cases until a software solution could be created. By March 1, 2008 -- a year later -- over 60,000 eligible veterans still had not had their cases reviewed for payment.

For its part, Lockheed Martin was unable to automate the calculation of VA Retro payments, as both Lockheed Martin and the Government had intended. There were several reasons why Lockheed failed to implement an automated solution. Essentially, the databases required to operate it did not exist, and there was a complex and varied

¹⁰ DFAS, *supra* note 8.

¹¹ DFAS internal memorandum (undated).

array of rules for computing benefits, making programming difficult and reliance on computer programs for a significant portion of cases impossible.¹² In addition to Lockheed's failing, the Government bore significant responsibility for the delays in creating an automated solution. The VA and the military services were slow to put the data in the necessary form for automation. Without an automated solution, Lockheed did not have sufficient numbers of employees to perform the research and calculations manually.¹³

One of the key reasons Lockheed had insufficient numbers of staff to compute the benefits was a relic of the original R&A contract proposal. The contractor proposed slashing staff in half over the life of the contract. By 2006, the contractor proposed to have no more than 306 employees, whereas the Government had employed 570 to perform the same functions.¹⁴

2. DFAS FOUND LOCKHEED'S PERFORMANCE DEFICIENT BUT WAS UNABLE TO ASSESS PENALTIES BY THE CONTRACT'S TERMS.

From the very start of the VA Retro program, DFAS managers could see a looming problem with Lockheed's performance. "As you can imagine," wrote the lead manager to his deputy, "this action has a lot of high level visibility so we need to keep a constant eye on it and be prepared to act as soon as we see any slippage in the schedule."¹⁵ Only one month later, a DFAS supervisor wrote, "The volume is low again this week."

By March 2007, DFAS managers were concerned about the viability of the project:

While I suspect there is a fair likelihood that Lm will successfully achieve the 50% plus one threshold, I do not have a warm and fuzzy about the remaining project. When I heard that upward of 40% of the remaining cases are with the IU [Individual Unemployability] category, I can see where more unexpected difficulties may arise... I do not see a clear plan that takes us to project completion by Sep 07 with a high degree of certainty.¹⁶

There was also disbelief within DFAS about Lockheed's projected completion date. Skepticism was expressed by a DFAS attorney about a Lockheed powerpoint presentation in December 2007:

¹² Staff briefing by Joseph Cipriano, President, Lockheed Martin Business Process Solutions (July 9, 2008).

¹³ E-mail from Steven Minnich to Stephen Giebelhaus, Michael Majeski, Francis Quinlan, Jill Eggleston (Dec. 4, 2007) and DFAS internal memo (undated).

¹⁴ Contractor proposal, *supra* note 4.

¹⁵ E-mail from Pat Shine to William Tyminski (Oct. 11, 2006).

¹⁶ E-mail from Karl Bernhardt to William Tyminski and Martin Kradlak (Mar. 6, 2007).

Even if the project runs from the week of January 7 through the end of April 2008 (16 weeks) at 1,500 per week, LM would process only 24,000 cases, only half of the remaining cases.¹⁷

Lockheed's performance in other areas of responsibility was a source of concern as well. A senior manager wrote his top management:

I'm hearing and seeing a lot more problems here than just the VA Retro especially in the customer service arena.¹⁸

Overseeing Lockheed was difficult. One senior manager could not even decipher statistics from the contractor:

Maybe you understand these reports that R&A is providing better than I do. Look at the daily productivity for 1/16/08. The first attachment indicates zero productivity for 1/16/08. Now, look at the first slide in the second attachment going left to right. This chart reflects that 197 accounts were actually processed from the remaining original population. Does the 3rd attachment reflect that 258 cases were on 1/16/08. What's the accurate number[?]¹⁹

Minutes from a meeting on January 4, 2008 of top DFAS managers encapsulate DFAS' dependence on Lockheed, even for basic understanding of the reasons why Lockheed was failing to meet expectations:

What is the planned daily productivity per person? DS [Doug Smith] stated 6 cases per person per day X 50 people = 300 per day[.] What is the actual productivity per person? DS stated 1.4 cases per day because of slow data from the VA. ZG [Zack Gaddy] then asked why the 5K cases previously identified as not needing data from the VA to compute weren't done yet? *DS stated we don't know, we would have to ask LM [Lockheed].* (emphasis added).²⁰

Dissatisfied and frustrated with Lockheed's poor performance, Mr. Zack Gaddy, DFAS Director, personally monitored progress on the VA Retro program and frequently complained to Lockheed about low productivity and the high number of errors DFAS quality control auditors were detecting.²¹ The following comments and conclusions, taken from e-mails he wrote to DFAS managers and Lockheed supervisors, are typical:

¹⁷ E-mail from Scott Lafferty to Linda Etter (Jan. 3, 2008).

¹⁸ E-mail from Lee Krushinski to Martha Stearns and Chet Boutelle (Dec. 3, 2007).

¹⁹ E-mail from Gene Benisek to Douglas Jakyma (Jan. 24, 2008).

²⁰ E-mail from Robert Myers to Karl Bernhardt and Doug Smith (Jan. 4, 2008).

²¹ Beginning in November 2007, Mr. Gaddy demanded daily updates on VA Retro payments. E-mail from Zack Gaddy to Martha Stearns (Nov. 14, 2007).

They aren't making their planned production so it calls into question their ability to meet the April deadline.²²

These results for Thursday are extremely disappointing... By now you should have a handle on why cases are not passing QA [quality assurance] and get the quality level to a point where adjudicated cases pass muster.²³

LMCO missed the goal for the original cases by 707 for the week... Nowhere near the level required to meet productivity goals to achieve the revised plan briefed to me today. Also, why were 388 cases rejected back to Ops? By now I think LMCO should be able to produce consistently reliable results to avoid the high level of rework that has occurred since the inception of this project.²⁴

Mr. Gaddy also expressed his concern about the damage to DFAS' reputation caused by Lockheed's performance. Mr. Gaddy's email to a senior Lockheed executive is illustrative:

My biggest concern is that you deliver on the plan. Once I brief the congressional staffers and the media on the plan, they will not be forgiving of another missed completion [sic] date.²⁵

DFAS formally expressed concerns to Lockheed in writing as well. At the end of April, 2008, DFAS wrote to Lockheed:

DFAS recognizes that ... substantial changes were made in processes, applied tools, and manpower resulting in over 13,000 cases being adjudicated in March. Unfortunately, this led DFAS, the DoD leadership and Congress placed [sic] a high level of confidence in your revised plan and the asserted completion dates. However, since that initial success, both production and quality have fallen off to a point where production is behind by 5,400 cases with no indication that the project can be completed in accordance with your plan.

In short, LM has failed to meet Congressional and DoD Leadership expectations, as established by LM projections. This failure has placed DFAS and LM credibility in serious jeopardy as those briefed on the project have moved from being guardedly optimistic to skeptical in their acceptance of our ability to complete this project.²⁶

²² E-mail from Zack Gaddy to Martha Smith, Chet Boutelle, Lee Krushinski (Feb. 22, 2008).

²³ E-mail from Zack Gaddy to Rocky Thurston, Karl Bernhardt, Robert Cook, Martha Smith (Apr. 4, 2008).

²⁴ E-mail from Zack Gaddy to Howard Ruddell, Douglas Smith, Karl Bernhardt (May 5, 2008).

²⁵ E-mail from Zack Gaddy to Peter Rogers (Dec. 10, 2007).

²⁶ Letter from Steven H. Minnich to Mr. Joseph Cipriano (Apr. 28, 2008).

3. THE TERMS OF LOCKHEED'S COST PLUS CONTRACT IMPAIRED LOCKHEED'S ACCOUNTABILITY TO DFAS.

Features of the contract placed limitations on DFAS' ability to hold Lockheed accountable for poor performance. The contract contained no performance standards.²⁷ The dilemma was explained in an internal email from the contracting officer in charge of the VA Retro Lockheed contract:

folks have not understood the "best effort" nature of cost plus. At the end of this they will want a hammer to hold over the contractor and there will not be one.²⁸

Rather than include VA Retro under the existing R&A contract, DFAS entered into an open-ended, Cost Plus Fixed Fee (CPFF) contract with Lockheed in 2006. The CPFF contract required only exertion of effort by the Lockheed to fulfill its obligations. The deadlines Lockheed repeatedly failed to meet were not binding. The contract did not provide for penalties for poor contractor performance.

DFAS was also impaired by the contract from even giving an "unsatisfactory" evaluation to Lockheed. A draft of such a letter began circulate within DFAS in November 2007. One of those early drafts identified the subject of the letter as "Unsatisfactory Performance." But that assessment was edited out of the final version of the letter. A margin note created during the editing of the letter explained why:

Contract performance cannot be deemed to be Unsatisfactory. They have applied the resources identified. Desk audits have shown resources applied and working as promised... The quantity has been unsatisfactory, but the payment calculations and processes used have been accepted.²⁹

D. DFAS CUT BACK QUALITY CONTROL AND USED FEDERAL WORKERS TO SUPPLEMENT LOCKHEED'S WORKFORCE TO DECREASE PAYMENT BACKLOG.

In an effort to rescue the program from further delay, DFAS management settled on a number of questionable approaches to accelerate payments and clear the backlog. First, DFAS management assigned federal workers to relieve Lockheed of some of its R&A contractual responsibilities, in order to free up those Lockheed personnel to work on calculating VA Retro payments. These included assigning federal employees to perform Call Center duties covered by the R&A contract. Second, in February 2008, DFAS decided to suspend government procedures designed to verify the accuracy of payments

²⁷ Contract issued by DFAS to Lockheed for VA Retro program (MDA220-01-D-0002) (Sept. 27, 2006)

²⁸ E-mail from Steven Minnich to David Kane, Michael Lindsay, Michael Majeski, Eric Miller (Dec. 4, 2007).

²⁹ See attachments for a copy of the draft letter with margin notes.

and outsource quality assurance to Lockheed. Up to that point, the Government itself checked the accuracy of Lockheed's benefits calculations by means of exacting audits performed by the Continuing Government Activity (CGA) -- essentially project managers and auditors working for the federal government.³⁰

1. DFAS BYPASSED GAO REGULATIONS ON STATISTICAL SAMPLING IN FEDERAL QUALITY-CONTROL PROCEDURES.

Top DFAS management, however, determined that the CGA process was further slowing the benefits payment process.³¹ In response, DFAS first diverted federal workers from other DFAS functions to work in CGA. Because concerns about delays remained, in February 2008, DFAS then opted for an alternative approach, and suspended its practice of independently verifying the accuracy of Lockheed's VA Retro calculations.

Under the new quality assurance approach implemented on or about March 1, 2008 DFAS relied upon Lockheed's own quality assurance to check accuracy of payments. DFAS closed down the extensive independent audits performed by the CGA. No longer being able to independently certify accuracy, DFAS changed its certifying procedures: Lockheed certified accuracy, DFAS certified that Lockheed had followed specified procedures.³²

The Comptroller General of the United States has established rules for the application of statistical sampling in government quality assurance procedures. In fact, in 2003, DFAS approached GAO for relief from the sampling guidelines for other payments DFAS issued. GAO denied the request.³³

In the case of VA Retro payments, the following rule applied: for payments under \$2500, statistical sampling sufficient to achieve a 95% confidence interval for a 97% accuracy rate. For payments over \$2500, no sampling was allowed. Every payment required verification.

³⁰ For VA Retro payments that were \$2500 or less, CGA conducted rigorous random sampling to verify accuracy. Samples confirmed to be 97% accurate enabled the entire payroll from which those samples were drawn to be approved without further verification. For payments in excess of \$2500, every single payment in a payroll was manually checked. Any payment that was not confirmed was returned to the contractor for further processing.

³¹ Typical was this expression of concern about CGA's becoming a bottleneck, from the CGA director, "Based on expectations of increased production by LM, and importantly an expectation of more DFAS payments in excess of \$2500 (100% review required), I do not believe we have sufficient personnel to accommodate the anticipated larger volume." E-mail from Douglas Smith to Martha Stearns (Jan. 28, 2008).

³² VA Retro Project Payroll Summary Statement (undated), CGA Review Guidelines (undated).

³³ Letter from McCoy Williams to Martha Stearns (Aug. 28, 2003).

2. LOCKHEED APPLIED A WEAKER STANDARD TO QUALITY ASSURANCE THAN STANDARD MANDATED BY GAO.

Lockheed's Quality Assurance relied exclusively on statistical sampling, making no distinction between payments over \$2500 and payments below \$2500.³⁴ This represented a lower standard of quality assurance than the government would have performed.

Nevertheless, DFAS management believed that accuracy of payments would not be affected by leaving the contractor to verify accuracy of its own work. In making the decision, DFAS management cited an internal study, known as the "Moxley study," finding that Lockheed's own quality assurance measures were sufficient to satisfy the Government.

However, the Subcommittee's review of the Moxley study reveals it was severely flawed. The study drew on a non-representative, non-random statistical sample. All of the cases in the sample were of the easiest type, rather than the complex cases that had been saved for last.³⁵ The study also misapplied the verification rules. The cases applied the 97% threshold used to evaluate payments below \$2500, when all of the cases in the Moxley sample exceeded \$2500. Payments in excess of \$2500 required a 100% accuracy threshold. In fact the Moxley study found that the samples failed to meet the 100% accuracy threshold. That should have been enough to cast doubt upon the plan to rely exclusively upon Lockheed to check its own work.

Furthermore, no other independent verification of accuracy was performed at any level within the DoD. Indeed, the DoD's Operations Review Division, which conducts statistical sampling of many DoD payments, has avoided reviewing VA Retro pay, because it did not want to slow down DFAS in clearing the backlog.³⁶

³⁴ Lockheed briefing, *supra* note 12.

³⁵ Staff briefing from Karl Bernhardt and Martha Smith, DFAS, (Jun. 24, 2008).

³⁶ E-mail from Frank Lucas to Karl Bernhardt (Jun. 30, 2008). In this exchange, Karl Bernhardt poses the questions and Frank Lucas answers them:

Q. [Y]ou have not to this date audited any VA-Retro payrolls specifically?

A. True.

Q. And since you audit payrolls for improper payments, why have you not audited any VA-Retro payments to date?

A. Several reasons. 1. Outside our area of expertise. We presently do not have adequately trained staff member [sic] that possess an in-depth knowledge of CRSC, CRDP and the VA Retro process to perform a comprehensive post pay review. The CGA would appear a more likely candidate to perform these types of reviews. 2. Timing. It would not appear appropriate to conduct a VA-Retro post payment review, even if I had a properly trained staff, while R&A was striving to get these payments issued and reduce a substantial backlog.

3. UP TO 60,051 PAYMENTS TO VETERANS WERE ISSUED AFTER A SUSPENSION OF QUALITY CONTROL MEASURES WENT INTO EFFECT ON MARCH 1, 2008.³⁷

After suspending its own quality control measures in deference to Lockheed's, the effort to clear the backlog gathered steam. The number of payments issued under the VA Retro program climbed quickly, averaging more than 15,000 per month. While this helped DFAS to clear the backlog of VA Retro cases, the Subcommittee Majority Staff believes that serious questions remain about the accuracy of payments made during this time. Payments in excess of \$2500 received a lower standard of quality assurance after suspension of the Government's 100 percent verification standard. While the Subcommittee Majority Staff does not know how many erred payments were sent, we do not believe that DFAS knows either.

E. DFAS AND LOCKHEED FAILED TO VERIFY THE ACCURACY OF DENIALS OF PROGRAM ELIGIBILITY.

Many veterans who benefitted from the concurrent receipt entitlement were deemed not eligible for a retroactive payment. Unlike VA Retro payments, denials of VA Retro eligibility received no quality assurance checks at any time. According to Lockheed's operating procedures, Lockheed's quality assurance team does not verify the accuracy of any "No Pay Due" determination.³⁸ As a result, "No Pay Due" letters go directly to veterans without prior verification.

The Subcommittee Majority Staff is concerned that under this procedure, errors will remain undetected unless a veteran contests a denial. Neither DFAS nor Lockheed knows how many "No Pay Due" letters could be in error.

Illustrative of this procedural problem is Command Sergeant Major Harold Lewis's challenge of a no-payment notification he received from DFAS in April 2008.

Command Sergeant Major Lewis is a disabled Army veteran who received his injuries in combat in Vietnam. Originally a draftee, he served 28 years in field artillery and eventually rose to command levels of authority. The Army attributes his multiple disabilities – including Diabetes Type II, acute peripheral neuropathy, tinnitus and hearing loss – to numerous combat injuries including concussions and broken vertebrae from rocket attacks and exposure to Agent Orange.

Mr. Lewis was denied retroactive pay, after waiting approximately one year for adjudication of his case. He contested the no pay determination. He had an easy-to-understand reason to believe he would be due retroactive pay: he had a letter from the

³⁷ DFAS, *VA Retro Project update* (Statistics as of Feb. 29, 2008).

³⁸ Lockheed, *Standard Procedures, Team Blue VA Retro/CRSC Payroll Review, Team Blue Quality Assurance Payroll Review*, (Procedures No. 1111.08).

Department of Veterans Affairs affirming his qualifying disability rating effective January 1, 2006.³⁹ This conclusive documentation would have also been available to Lockheed before they denied Mr. Lewis his eligibility. Nevertheless, he was initially rebuffed.⁴⁰ Finally, after “a year long odyssey,” Mr. Lewis received notification by letter dated June 18, 2008 that his claim had been reviewed and recomputed, and that he was entitled to a total retroactive payment of nearly \$15,000.⁴¹

In an interview, Mr. Lewis said, “Most guys who get a letter saying they get zero money would never challenge it. They wouldn’t know how. I’d be surprised if they understand what they get in the mail. And lots of guys will just trust their government I get sad to the point of crying seeing the guys in worse shape than me. [But] DFAS wants us to die or just give up trying [to get our benefits].”⁴²

He concluded, “If they treat a Command Sergeant Major like me this way, how do you think they treat the guys with just a couple years combat experience? It is just so sad.”

**1. AT LEAST 28,283 VETERANS WERE DENIED
RETROACTIVE PAY BASED ON DETERMINATIONS MADE
WHOLLY WITHOUT QUALITY ASSURANCE OR REVIEW.**

Unverified “No Pay Due” letters were sent to at least 28,283 veterans .⁴³

³⁹ Letter from Harold E. Lewis to Martha J. Smith, Director DFAS Cleveland (Jun. 1, 2008).

⁴⁰ Letter from Retired and Annuity Pay to Harold E. Lewis (April 2, 2008)

⁴¹ Letter from Douglas Smith, Director Retired and Annuitant Pay, DFAS, to Harold Lewis (Jun 18, 2008)

⁴² Phone conversation with Mr. Lewis (Jul. 8, 2008).

⁴³ Letter from Zack E. Gaddy to Dennis J. Kucinich (Jul. 11, 2008). Lockheed estimated the rate of denials was 20 percent. Lockheed briefing, *supra* note 12. At the Lockheed estimated rate of denial, the number of veterans who received denials of retroactive payments is higher: 43,458.